

## OSTEOPATHIC MEDICAL BOARD

### Proposed Regulations - Article 12.3 Citations and Fines

#### 1659.30. Authority to Issue Citations and Fines.

(a) For purposes of this article, "executive director" shall mean the executive director of the board.

(b) The executive director is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed osteopathic physician and surgeon of the statutes and regulations referred to in Section 1659.31.

(c) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail return receipt requested.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 148, Business and Professions Code.

#### 1659.31. Citable Offenses.

The amount of any fine to be levied by the executive director shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and also the extent to which such person has mitigated or attempted to mitigate any damage or injury caused by the violation. The fine shall be within the range set forth below.

(a) The executive director may issue a citation under section 1659.30 for a violation of the provisions listed in this section. The fine for a violation of the following code sections shall not exceed \$2500:

- (1) Business and Professions Code Section 119
- (2) Business and Professions Code Section 125
- (3) Business and Professions Code Section 125.6
- (4) Business and Professions Code Section 475(a)(1)
- (5) Business and Professions Code Section 490
- (6) Business and Professions Code Section 580
- (7) Business and Professions Code Section 581
- (8) Business and Professions Code Section 582
- (9) Business and Professions Code Section 583
- (10) Business and Professions Code Section 650
- (11) Business and Professions Code Section 651
- (12) Business and Professions Code Section 654
- (13) Business and Professions Code Section 654.1
- (14) Business and Professions Code Section 654.2
- (15) Business and Professions Code Section 655.5
- (16) Business and Professions Code Section 655.6
- (17) Business and Professions Code Section 702

(18) Business and Professions Code Section 730  
(19) Business and Professions Code Section 732  
(20) Business and Professions Code Section 802(b)  
(21) Business and Professions Code Section 802.1  
(22) Business and Professions Code Section 810  
(23) Business and Professions Code Section 2021  
(24) Business and Professions Code Section 2052  
(25) Business and Professions Code Section 2054  
(26) Business and Professions Code Section 2216  
(27) Business and Professions Code Section 2216.1  
(28) Business and Professions Code Section 2216.2  
(29) Business and Professions Code Section 2221.1  
(30) Business and Professions Code Section 2236  
(31) Business and Professions Code Section 2238  
(32) Business and Professions Code Section 2240  
(33) Business and Professions Code Section 2243  
(34) Business and Professions Code Section 2244  
(35) Business and Professions Code Section 2250  
(36) Business and Professions Code Section 2255  
(37) Business and Professions Code Section 2256  
(38) Business and Professions Code Section 2257  
(39) Business and Professions Code Section 2259  
(40) Business and Professions Code Section 2261  
(41) Business and Professions Code Section 2262  
(42) Business and Professions Code Section 2263  
(43) Business and Professions Code Section 2264  
(44) Business and Professions Code Section 2266  
(45) Business and Professions Code Section 2271  
(46) Business and Professions Code Section 2272  
(47) Business and Professions Code Section 2276  
(48) Business and Professions Code Section 2285  
(49) Business and Professions Code Section 2415  
(50) Business and Professions Code Section 2454.5  
(51) Business and Professions Code Section 2456.1  
(52) Business and Professions Code Section 17500  
(53) Health and Safety Code Section 123110  
(54) Title 16 Cal. Code Regs. 1604  
(55) Title 16 Cal. Code Regs. 1633  
(56) Title 16 Cal. Code Regs. 1685

(b) Notwithstanding the administrative fine amounts specified in subsection (a), a citation may include a fine between \$2501 and \$5000, if one or more of the following circumstances apply:

1. The citation involves a violation that has an immediate relationship to the health and safety of another person;
2. The cited person has a history of two or more prior citations of the

- same or similar violations;
3. The citation involves multiple violations that demonstrate a willful disregard of the law;
  4. The citation involves a violation or violations perpetrated against a senior citizen or a disabled person.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 148, Business and Professions Code.

#### **1659.32. Compliance with Orders of Abatement**

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time in which to complete the correction from the executive director. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is repealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and a failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 148, Business and Professions Code.

#### **1659.33. Citations for Unlicensed Practice.**

The executive director is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as an osteopathic physician and surgeon under the Medical Practice Act. The executive director is authorized to issue citations and orders of abatement and levy fines only in the case of (a) an osteopathic physician and surgeon who has practiced with a delinquent license or (b) an applicant for licensure who practices prior to issuance of a license. Each citation issued shall contain an order of abatement. Where appropriate, the executive director shall levy a fine for such unlicensed activity in accordance with subdivision (b)(3) of Section 125.9 of the code. The provisions of Sections 1659.30 and 1659.32 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 148, Business and Professions Code.

#### **1659.34. Contest of Citations.**

(a) In addition to requesting a hearing as provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within 15 calendar days after service of the citation, notify the executive director in writing of his or her request for an informal conference with the executive director regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served.

(b) The executive director shall, within 30 calendar days from the receipt of the request, hold an informal conference with the person cited and/or his or her legal counsel or authorized representative. The conference may be held telephonically. At the conclusion of the informal conference the executive director may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The executive director shall state in writing the reasons for his or her action and serve or mail a copy of his or her findings and decision to the person cited within 15 calendar days from the date of the informal conference, as provided in subsection (b) of section 1659.32. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive director. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 calendar days in accordance with subdivision (b)(4) of Section 125.9 of the code.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 148, Business and Professions Code.

#### **1659.35. Public Disclosure; Records Retention.**

Every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public. Citations that have been resolved, by payment of the administrative fine or compliance with the order of abatement, shall be purged seven (7) years from the date of resolution. A citation that has been withdrawn or dismissed shall be purged immediately upon being withdrawn or dismissed.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.cxiii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 125.9 and 803.1, Business and Professions Code.